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Caspary, 15 S. W. 47. When, however, the requirements of the statute have been performed in substance, defects in an appeal bond as to sureties which do not go to the jurisdiction of the appellate court, will not prevent that court from allowing and requiring the appellant to amend his defective appeal bond or to file a new one. *State Sav. & Loan Assoc. v. Johnson,* 70 Neb. 753; *Murphy v. Steele,* 51 Ind. 81.

MASTER AND SERVANT—CONTRIBUTORY NEGLIGENCE OF SERVANT—NOTICE.—LOCKHART V. SLOSS-SHEFFIELD STEEL & IRON CO., 51 So. 627 (ALA.). —*Held,* it is not contributory negligence on the part of a servant to fail to give notice within a reasonable time of a known defective condition.

It is almost universally held that the failure of a servant to report dangerous conditions to his master, is contributory negligence, and will bar a recovery of damages for injuries received in consequence. *Wood on Master and Servant,* Sec. 335; *Washington & G. R. Co., v. McDade,* 135 U. S. 554; *Pautz v. Plankinton Packing Co.,* 118 Wis. 47; *Dobbins v. Lang,* 181 Mass. 397. This rule has been modified in some jurisdictions, however, the servant being allowed a reasonable time for reporting the defect after it has come to his knowledge, and if that time has not elapsed before the accident, he may recover even though he failed to report the danger. *Fordyce v. Edwards,* 60 Ark. 438; *Missouri K. & T. R. Co. v. Williams,* 28 Tex. Civ. App. 615. On the other hand, if the master is aware of the danger, he cannot rely on the servant's failure to report it as a defense. *Mobile & Birmingham R. Co. v. Holborn,* 84 Ala. 133; *Pank v. St. Louis D. B. Co.,* 159 Mo. 467; *Pennsylvania R. Co. v. McCaffrey,* 139 Ind., 430; *Cushman v. Carbondale F. Co.,* 116 Iowa 618.

MORTGAGES—FORECLOSURE—REVERSAL OF JUDGMENT—SALE FOR TAXES—RESTITUTION AND ACCOUNTING.—NATIONAL SURETY CO. V. WALKER, 125 N. W. 338 (IA.).—A suit to foreclose a mortgage was brought against the mortgagors and V., who had acquired a tax title to the property. V. answered, claiming title under his tax deed, and by cross-petition prayed that his title be quieted against the plaintiff and his co-defendants, the mortgagors. *Held,* that the property having been again sold for taxes to plaintiff pending appeal from the judgment of foreclosure, and the foreclosure judgment having been reversed, V., at least, was entitled to restitution and an accounting. McClain and Evans, JJ., *dissenting.*

On the reversal of the foreclosure decree it is generally held that restitution may be had. *Whitsesell v. Peck,* 176 Pa. St. 170; *Trow v. Messer,* 32 N. H. 361. But the right of a mortgagee, who buys the mortgaged land at a tax sale, to assert the title so acquired against lienors, raises a question as to which of the courts are in conflict. Some hold that the mortgagee cannot assert such title. *Woodbury v. Swan,* 59 N. H. 22; *Schenck v. Kelley,* 88 Ind. 444. This view, however, is supported on the ground of an obligation on the mortgagee to pay the taxes. *Blackwood v. Van Vleit,* 30 Mich. 118; *Moore v. Titman,* 44 Ill. 367. On the other hand, other courts hold such a purchase valid because a mortgagee not in possession as such is under no duty to pay the tax. *Neal v.*

Frazier, 63 Ia. 457; *Waterson v. Devoe,* 18 Kan. 223. That the title relates back to the time of the purchase for the purpose of substantial justice. *Conn. Mut. L. Ins. Co. v. Bulte,* 45 Mich. 113. That it is an election to occupy the relation of purchaser with all the rights and incidents which the law attaches. *Williams v. Townsend,* 31 N. Y. 411. A tax title, however, is paramount to existing estates, becoming absolute after two years. *Langley v. Chapin,* 134 Mass. 82, and is *prime* to all other incumbrances. *In re Douglas,* 41 La. Ann. 765, although it does not affect prior incumbrances. *Monow v. Dows,* 28 N. J. E. 459. And, although the title is one acquired at a second sale of the property for taxes, the purchaser gets a good title. *Diamond Coal Co. v. Fisher,* 19 Pa. (7 Harris) 267, providing the proceedings are regular and the owner has not redeemed. *Atkins v. Hinman,* 7 Ill. 437. Nor is he liable for money paid by the former purchaser under an older assessment, as to which he was not in default. *Smith v. Laumier,* 84 Mo. 672. Only in case the title he acquired is defective, is he liable to make compensation. *Stebbins v. Horton,* 4 Kan. 353.

RAILROADS—INJURY TO ANIMALS ON OR NEAR TRACK—REQUIREMENTS AS TO FENCES.—MILLER V. CHICAGO, B. & Q. R. CO., 105 PAC. 908 (WYO.).—*Held,* that a constitutional requirement making railroads liable for animals killed by them on an unfenced track outside of an incorporated town or village, do not require the fencing of station grounds outside of incorporated cities and villages, where public convenience requires the same to remain open.

It is an almost universal rule that the statutes requiring railroad companies to erect fences and cattle guards along the right of way, do not apply to points where a compliance with the statute would seriously interfere with the company in operating its road, or the public in doing business with the company, as in the case of depot grounds. *Mobile & O. R. Co. v. House,* 96 Tenn. 552; *Chicago & G. T. R. Co. v. Campbell,* 47 Mich. 265; *Robertson v. Atlantic & P. R. Co.,* 64 Mo. 412; *Moses v. Southern P. R. Co.,* 18 Ore. 385; *Contra*: *Buffalo, N. Y. & E. R. Co. v. Bradley,* 34 N. Y. 427. And as a general rule the depot grounds are held to extend to the switch and sidetrack limits. *Chicago, B. & Q. R. Co. v. Hans,* 111 Ill. 114; *Davis v. Burlington, M. & R. Co.,* 26 Iowa 549; *Indiana B. & R. Co. v. Leak,* 89 Ind. 596. But the question of the extent of the depot grounds is usually held to be a matter of fact for the jury to decide. *Railroad Co. v. Newbrander,* 40 Ohio St. 15; *Indiana B. & W. R. Co. v. Hale,* 93 Ind. 79; *Snell v. Minneapolis, S. P. & S. M. R. Co.,* 87 Minn. 253. Private shipping points, however, are not excepted, even though occasionally used by the railroad company. *Kansas City, F. S. & G. R. Co. v. Hays,* 29 Kan. 193.

SALES—BREACH OF WARRANTY—COUNTERCLAIM FOR DAMAGES.—SAPP V. BRADFIELD, 125 S. W. 721 (KY.).—In an action on a note, given for the price of a horse sold to the defendant by the plaintiff, to be used in logging operations, and with a warranty of soundness, *held,* that the defendant could counterclaim as damages only the amount expended on